

**ORIGINAL NEW APPLICATION**

LEWIS  
AND  
**ROCA**  
LLP  
LAWYERS



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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Commission

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KRISTIN K. MAYES

Commissioner

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*MW*

GARY PIERCE

Commissioner

T-03654A-07-0101

T-03708A-07-0101

T-03779A-07-0101

T-04176A-07-0101

In the Matter of the Joint Application of )  
Level 3 Communications, LLC, WilTel )  
Communications, LLC, WilTel Local )  
Network, LLC, and Broadwing Communications )  
LLC for a Limited Waiver of )  
the Public Utility Holding Companies )  
and Affiliated Interests Rules )  
(A.A.C. R14-2-801 et seq.) and Approval of )  
Encumbrance of Assets )

Docket Nos. T-03654A-07  
T-03708A-07  
T-03779A-07  
T-04176A-07

**JOINT APPLICATION**

**FOR A PARTIAL WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES  
AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 et seq.) AND APPROVAL OF  
ENCUMBRANCE OF ASSETS**

Pursuant to A.A.C. R14-2-806, Level 3 Communications, LLC ("Level 3 LLC"),  
Broadwing Communications, LLC ("Broadwing"), and WilTel Communications, LLC ("WilTel-  
Comm") (collectively, the "Guarantor Applicants") request a limited waiver of the Arizona  
Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated  
Interests Rules, A.A.C. R12-2-801 to R12-2-806 (the "Rules") in connection with two separate  
financing arrangements and approval of the encumbrance of the Guarantor Applicants' assets

1 pursuant to A.R.S. § 40-285. WilTel Local Network, LLC ("WilTel-LN) also requests approval  
2 to encumber its Arizona assets pursuant to A.R.S. § 40-285 as part of the second transaction  
3 discussed below. In the first transaction, Level 3 Financing, Inc. ("Financing"), the immediate  
4 corporate parent of Level 3 LLC, plans to issue notes to qualified institutional buyers ("Buyers")  
5 in offerings that are exempt from registration under U.S. Federal securities laws to refinance  
6 existing notes, and the Guarantor Applicants will act as guarantors with respect to the note  
7 issuance. The notes will subsequently be exchanged for substantially identical notes registered  
8 under federal securities laws (the "Exchange Notes"). In a second transaction, Financing will  
9 enter into a Credit Agreement for up to \$1 billion, and Applicants will act as guarantors of that  
10 agreement, and the Applicants and WilTel-LN<sup>1</sup> will pledge their Arizona assets as part of the  
11 agreement.

12 In support, the parties state as follows:

13 **INTRODUCTION**  
14

15 Based on their operational revenues, Level 3 LLC, WilTel-Comm, and Broadwing are  
16 considered Class A utilities and, therefore, subject to the Rules. The Rules regulate the formation  
17 of public utility holding companies and certain transactions and activities between public service  
18 corporations and their affiliated interests. According to the Commission, the Rules are intended  
19 to: (i) prevent the commingling of utility and non-utility funds; (ii) prohibit cross-subsidization of  
20 non-utility activities by utility ratepayers; (iii) prevent negative impact of non-utility activities on  
21 a utility's financial credit; and (iv) ensure that the utility and its affiliates provide the Commission  
22 with the information necessary to "carry out its regulatory responsibilities." See A.C.C. Decision  
23 No. 56618.

24  
25  
26 <sup>1</sup> Although WilTel-LN will be executing the guarantees described in this Application, WilTel-LN is not a Class A utility and, therefore, not subject to the Rules.

1 The Guarantor Applicants respectfully submit that, in light of the Rules' stated purposes,  
2 they should be granted a waiver of the requirements of the Rules for the purposes of the financing  
3 arrangements described herein. As explained below, the Guarantor Applicants operate in a highly  
4 competitive environment that effectively protects customers from activities that will detrimentally  
5 affect service to customers. Moreover, a limited waiver of these Rules is in the public interest.  
6 Therefore, the Guarantor Applicants request a limited waiver of the Rules as they may apply to  
7 the financing arrangements described below.

8 **DESCRIPTION OF APPLICANTS**

9 Level 3 LLC is a Delaware limited liability company and is a wholly owned subsidiary of  
10 Financing, which in turn is a wholly owned subsidiary of Level 3 Communications, Inc.  
11 ("Parent"). All three companies have principal offices located at 1025 Eldorado Boulevard,  
12 Broomfield, CO 80021. Level 3 LLC provides high-quality voice and data services to carriers,  
13 ISPs, and other business customers over its IP-based network. Level 3 LLC is a non-dominant  
14 carrier authorized to provide resold and/or facilities-based telecommunications services  
15 nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis.  
16 Level 3 LLC is also authorized by the Federal Communications Commission to provide  
17 international and domestic interstate services as a non-dominant carrier.

18 In Arizona, Level 3 is authorized to provide facilities-based and resale local exchange, toll  
19 and access services pursuant to a certificate granted Decision No. 61737 issued by the  
20 Commission in Docket No. T-03654A-98-0641 on June 4, 1999. Further information concerning  
21 Level 3's legal, technical, managerial and financial qualifications to provide service was  
22 submitted with its application for certification and is, therefore, a matter of public record. Level 3  
23 respectfully requests that the Commission take official notice of that information and incorporate  
24 it herein by reference.

25 Broadwing, a subsidiary of Level 3 LLC, is a telecommunications provider that is  
26 authorized to provide telecommunications service in all fifty states and the District of Columbia;

1 Broadwing is authorized to provide local exchange telecommunications services in 19 states and  
2 the District of Columbia. Broadwing is also authorized to provide interstate and international  
3 telecommunications services pursuant to Section 214 authorization granted by the Federal  
4 Communications Commission. In Arizona, Broadwing is authorized to provide resold and  
5 facilities-based intrastate interexchange telecommunications services pursuant to Docket No. T-  
6 04176A-03-01785 granted by the Commission on July 25, 2003.

7  
8 WilTel Communications Group, LLC is a wholly owned subsidiary of Level 3 LLC and is  
9 the immediate corporate parent of WilTel-Comm, which in turn is the parent of WilTel-LN. All  
10 three companies have offices at One Technology Center, Tulsa, OK 74103. In Arizona, WilTel-  
11 Comm is authorized to provide resold and facilities-based competitive local exchange and  
12 interexchange services pursuant to a certificate granted by the Commission in Decision No. 62025  
13 issued in Docket No. T-03708A-99-074 on November 2, 1999. WilTel-LN is authorized to  
14 provide competitive resold and facilities-based local exchange, exchange access, and intrastate  
15 dedicated access telecommunications services pursuant to a certificate granted by the Commission  
16 in Decision No. 62727, issued in Docket No. T-03779A-99-0519 on June 30, 2000.

17 **CONTACT INFORMATION**

18 Inquiries or copies of any correspondence, orders, or other materials pertaining to this  
19 Application should be directed to:

20 Thomas H. Campbell  
21 Michael T. Hallam  
22 Lewis & Roca LLP  
23 40 North Central Avenue  
24 Phoenix, AZ 85004-4429  
25 Tel: (602) 262-5723  
26 Fax: (602) 734-3841  
Email: TCampbell@lrlaw.com

Catherine Wang  
Danielle C. Burt  
Bingham McCutchen LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007  
Tel: (202) 373-6000  
Fax: (202) 424-7647  
Email: catherine.wang@bingham.com  
Email: danielle.burt@bingham.com

and

William P. Hunt, III  
Vice President of Public Policy  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Tel: (720) 888-2516  
Fax: (720) 888-5134  
Email: Bill.Hunt@Level3.com

#### **DESCRIPTION OF THE FINANCING ARRANGEMENTS**

The applicants request Commission approval to participate in two financing arrangements. In the first, the applicants will provide a guarantee for an aggregate principal amount of up to approximately \$1 billion in new notes to be issued by Financing to qualified institutional buyers ("Buyers"). The Exchange Notes, which are exempt from registration under U.S. Federal securities laws, will subsequently be exchanged for substantially identical notes registered under federal securities laws. Proceeds of this transaction will be used to refinance existing indebtedness. The notes consist of both 8.75% fixed rate interest notes with a maturity date of 2017 and variable rate interest notes that have maturity dates of 2015. The Guarantor Applicants will provide a guarantee in relation to these notes.

In the second transaction, Financing, will enter into a \$1 billion Credit Agreement that will mature in 2014. The Guarantor Applicants request Commission approval to pledge their assets in the State of Arizona and issue a guarantee in support of this Credit Agreement. WilTel-LN also requests approval to pledge its assets in support of the Credit Agreement. The applicants

1 emphasize that neither the pledging of jurisdictional assets nor the guarantee obligations described  
2 herein will apply to the applicants until required regulatory approval is obtained. Customer  
3 deposits and prepayments will not be encumbered as part of this transaction.

4 The applicants' participation in these new financing arrangements will not result in a  
5 change in their management or in their day-to-day operations; nor will it adversely affect the  
6 applicants' current or proposed operations in Arizona. In fact, the financing arrangements will  
7 enable them to bring services to new markets and allow more consumers to benefit from their  
8 competitive services more quickly and efficiently. In addition, the financing arrangements will  
9 allow Financing and the applicants to borrow funds under favorable extended maturity terms and  
10 reduced interest expenses. Accordingly, and to the extent required, the applicants request that the  
11 Commission approve the participation of Applicants in financial arrangements described herein.

12 **BASIS FOR LIMITED WAIVER**  
13

14 A. The Proposed Transaction Will Not Directly or Indirectly Result in or Cause an  
15 Increase in the Guarantor Applicants' Maximum Rates on File with the Commission for Any  
16 Competitive Service.

17 The Commission previously has granted partial waivers of the Rules. *See, e.g.,* Decision  
18 No. 64737. In granting such waivers, the Commission determined that only when a transaction  
19 "could directly or indirectly result in or cause an increase in its maximum rate on file with the  
20 Commission for any competitive service" would a company have to make the necessary filings  
21 under A.A.C. R14-2-803, R14-2-804(A), (B), and (C), and R14-2-805. Level 3 LLC primarily  
22 provides competitive wholesale services to other carriers, VoIP providers, and Internet Service  
23 Providers. The market for such services is highly competitive and prices are set by competition.  
24 With every product pricing change initiated by Level 3 LLC, competitors inevitably introduce  
25 new services or re-price their service in a manner believed to be even more attractive to the  
26 consumer. Accordingly, neither Level 3 LLC nor its subsidiaries have incentive or ability to

1 charge unduly high or above-market prices that could be used to fund or subsidize unregulated  
2 affiliates or to commingle utility and non-utility funds in a manner that is harmful to Arizona  
3 consumers.

4 In addition, immediately following the applicants' participation in the financing  
5 arrangements, they will continue to offer the services it offers with no change in the rates or terms  
6 and conditions of service. The applicants do not anticipate that the financing arrangements will  
7 cause them to increase maximum rates on file with the Commission for competitive services.

8 B. Applicants' Participation in the Financing Arrangements is in the Public Interest

9 The proposed financing arrangements described herein are consistent with the public  
10 interest and will not impair the ability of the applicants to perform services to the public. The  
11 applicants emphasize that the proposed financing arrangements will reduce expenses from  
12 existing indebtedness that was previously secured by the applicants. Furthermore, the new  
13 financing arrangements now contemplated will be entirely transparent to consumers and will not  
14 alter the rates, terms and conditions under which the applicants provide service in Arizona. Also,  
15 the financing arrangements will not cause a change in the control of the applicants or Financing.

16 Approval of the applicants' participation in the proposed financing arrangements will  
17 serve the public interest in promoting competition among telecommunications carriers by  
18 providing the applicants and Financing with the opportunity to strengthen their financial position.  
19 The applicants and Financing believe that the financial arrangements described herein provide  
20 important financial benefits to the companies by improving and expanding the terms of credit  
21 under which the companies operate. As a result, the proposed transactions are expected to  
22 continue to yield financial benefits that ultimately inure to the benefit of the applicants'  
23 customers. Furthermore, by increasing the breadth and scope of telecommunications services  
24 made available through the applicants' ongoing operations, this financing transaction will  
25 ultimately benefit Arizona consumers. In sum, greater access to capital strengthens the  
26

1 applicants' ability to bring competitive telecommunications services to consumers in the State of  
2 Arizona and is, therefore, in the public interest.

3 **RELIEF REQUESTED**

4 Applicants request the following:

5 1. Waiver of the requirement under A.A.C. R14-2-804(B) that the Guarantor  
6 Applicants obtain Commission approval prior to entering into the guarantees described herein. In  
7 the alternative and pursuant to A.A.C. R14-2-804(B), the Guarantor Applicants request approval  
8 to guarantee the notes and to execute a guarantee of the Credit Agreement.

9 2. Waiver of any other applicable requirements of the Rules as they may apply to the  
10 transaction described herein.


11 3. Approval pursuant to A.R.S. § 40-285 of the encumbrance of assets as described  
12 herein.

13 **CONCLUSION**

14 For the foregoing reasons, the applicants respectfully requests that the Commission grant a  
15 limited waiver as set forth above, or, in the alternative, approve the Guarantor Applicants'  
16 guarantee of the notes issued by Financing and of the Credit Agreement. Applicants also request  
17 approval of the encumbrance of assets pursuant to A.R.S. § 40-285.

18 RESPECTFULLY SUBMITTED this 16th day of February , 2007.

19 LEWIS AND ROCA LLP

20   
21 \_\_\_\_\_

22 Thomas H. Campbell  
23 Michael T. Hallam  
24 40 N. Central Avenue  
25 Phoenix, Arizona 85044

26 Attorneys for Applicants



Original and 13 copies of the  
foregoing filed this 16th day of  
February, 2007, with:

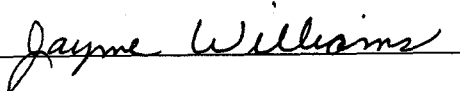
The Arizona Corporation Commission  
Utilities Division -- Docket Control  
1200 W. Washington Street  
Phoenix, Arizona 85007

COPY of the foregoing hand-  
delivered this 16th day of February,  
2007, to:

Christopher Kempley, Chief Counsel  
Legal Department  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

Ernest Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

Lyn Farmer, Chief Administration Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007



VERIFICATION

STATE OF COLORADO

§

COUNTY OF BROOMFIELD

§

§

I, William P. Hunt, state that I am Vice President Public Policy for Level 3 Communications, LLC; that I am authorized to make this Verification on behalf of Level 3 Communications, LLC and its subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.

Wm. P. Hunt 31

Name: William P. Hunt

Title: Vice President Public Policy  
Level 3 Communications, LLC

SWORN TO AND SUBSCRIBED before me on the 13<sup>th</sup> day of February, 2007.

Teresa Montoya  
Notary Public

My commission expires: 10-11-2010

